



August 15, 2002

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202**

Dear Ms. Dortch:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Emergency Declaratory and Other	)	WC Docket No. 02-202
Relief	)	
	)	

**COMMENTS OF THE  
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (“ALTS”) hereby files its comments in the above-referenced proceeding in response to the Commission’s Public Notice<sup>1</sup> regarding the Petition for Emergency Declaratory and Other Relief filed by Verizon (“Petition”).<sup>2</sup> In its Petition, Verizon asks the Commission to adopt certain principles it claims will protect the company from financial losses caused by bankruptcies in the industry. ALTS urges the Commission not to be swayed by Verizon’s unsupported assertions that these bankruptcies will lead to Verizon’s own demise if the relief it seeks is not granted. Under the guise of gaining protection against financial loss, Verizon here seeks Commission support instead to drive the remaining CLECs into further financial distress. ALTS opposes the Petition and urges the Commission not to grant Verizon and other ILECs the opportunity to further drive competitive carriers from the market or treat those carriers in an anticompetitive manner.

The Commission noted that several of the issues raised in the Petition have been raised

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<sup>1</sup> Public Notice, *DA 02-1859*, WC Docket No. 02-202 (rel. July 31, 2002) (“Notice”).

<sup>2</sup> Petition for Emergency Declaratory and Other Relief, WC Docket No. 02-202 (filed July 24, 2002) (“Petition”).

previously in other dockets.<sup>3</sup> ALTS joined competitive carriers in filing petitions to reject or suspend Verizon's tariff filing,<sup>4</sup> as well as a similar tariff filing by the SBC companies.<sup>5</sup> ALTS objected to proposed tariff changes in those petitions and will not repeat here the arguments against the individual changes Verizon seeks in its Petition, such as increased security deposits and shorter notice periods for disconnection, but incorporates the arguments contained therein into these comments. ALTS also individually filed reply comments in response to Winstar's Emergency Petition regarding Verizon's demand that IDT Winstar cure the prior indebtedness of "Old Winstar" before Verizon would transfer customers between the companies. ALTS urged the Commission to act swiftly to ensure seamless transition of Old Winstar customers to IDT Winstar and not to allow the RBOCs to hold those customers hostage until they receive the concessions they demand from competitors.<sup>6</sup>

The ILECs should not be permitted to use their monopoly power in the local telecom market to extract concessions in the bankruptcy arena. Even Verizon concedes that bankruptcy courts currently recognize the role of ILECs and take that into account in structuring assurances of payment by the bankrupt carrier.<sup>7</sup> The bankruptcy courts have the authority and

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<sup>3</sup> Notice at 1.

<sup>4</sup> Petition to Reject or, Alternatively, to Suspend and Investigate; *Revisions to Verizon Telephone Companies to its Tariff* F.C.C. Nos. 1, 11, 14, 16, Transmittal No. 226 (filed August 9, 2002) ("Petition to Reject VZ Tariff").

<sup>5</sup> Petition to Reject or, Alternatively, to Suspend and Investigate; *Revisions to Southwestern Bell Telephone Companies to its Tariff* F.C.C. Nos. 73, Transmittal No. 2906, *Ameritech Operating Companies to its Tariff* F.C.C. Nos. 2, Transmittal No. 1312, *Nevada Bell Telephone Company to its Tariff* F.C.C. Nos. 1, Transmittal No. 20, *Pacific Bell Telephone Company to its Tariff* F.C.C. Nos. 1, Transmittal No. 77, *Southwestern New England Telephone Companies to its Tariff* F.C.C. Nos. 39, Transmittal No. 772 (filed August 1, 2002) ("Petition to Reject SBC Tariffs").

<sup>6</sup> Reply Comments, *In the Matter of Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80 (filed May 3, 2002).

<sup>7</sup> Petition at 7.

responsibility to provide “adequate protection” to creditors and must do so considering all circumstances. There is no need for the Commission to interfere with these proceedings in favor of the ILECs – this duty is best left to the bankruptcy courts. Verizon should not be permitted to override the workings of those courts, either by mandating that a successor carrier cure prior indebtedness or by including preferential bankruptcy payment provisions for itself in its tariffs.

Verizon alleges that the bankruptcies of numerous competitive telecom carriers are “in no small measure” a result of the market opening provisions of the Telecom Act and the Commission’s pro-competitive policies adopted to implement those provisions.<sup>8</sup> Such an assertion is a clear indicator of Verizon’s true motive in this proceeding – to undermine those provisions in order to maintain its monopoly position in the market. ALTS maintains that the current downturn in the industry is due “*in no small measure*” to the consistent failure of the ILECs to fully and adequately comply with the provisions of the Telecom Act and the Commission’s rules. Some competitive carriers may have struggled financially regardless; however, far fewer would have experienced such a plummet if the ILECs had properly provisioned services in a timely manner rather than relentlessly disputing the underlying goal of the Telecom Act that there shall be competition in the local telecom market. It is disingenuous for Verizon to plead here for protection from a crisis it helped create.

Verizon argues that the measures it proposes in its Petition are consistent with those utilized in other industries; however, companies in a competitive industry would not be

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<sup>8</sup> *Id.* at 1.

permitted by market forces to impose such unreasonable demands on their customers.<sup>9</sup> If they did so and the customer had an alternative supplier, then the customer would simply leave its current supplier rather than submit to the demands. That is not an option in the local telecom market, however, because competitive carriers are unable to simply replace all the services they receive from the ILECs with services from an alternative carrier. CLECs are captive wholesale customers and thus need the Commission to prevent the ILECs from imposing unreasonable and discriminatory demands on them so that they can continue to provide valuable competitive services to consumers.

Verizon and other ILECs that have recently filed tariff revisions seeking to unilaterally impose burdensome requirements on competitive carriers without clear and objective indications that each carrier is at risk of nonpayment. For instance, each of these tariff filings would impose such requirements on a carrier even if in the past that carrier has consistently and timely paid its amounts due to the ILEC. The ILECs seek to use vague or unrelated criteria to judge that such a carrier is now at risk of no longer paying in such a manner. These criteria have little correlation to whether that carrier will make payments in the future, and furthermore, the ILECs are already adequately protected from nonpayment risk by security deposit provisions currently in their tariffs. Verizon makes general statements about the financial stress and upheaval of the telecom industry, but such generalities do not support its request for additional “reasonable protections” against potential financial fallout from virtually every carrier in the industry. The current market volatility, by itself, does not warrant imposing such

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<sup>9</sup> See Petition to Reject VZ Tariff at 8.

burdensome requirements on virtually all carrier-customers under its tariff.<sup>10</sup>

Moreover, imposing such requirements will merely further increase financial uncertainty for many competitive carriers. Most competitive carriers are already financially stretched and are judiciously spending their working capital. To now require them to tie up more of that working capital in the hands of their biggest competitors is to doom competition and possibly lead to the demise of many of those carriers. Compelling them to pay additional funds to each of the ILECs to insulate the ILECs from potential financial risk only adds to the current financial uncertainty because competitive carriers would not have access to that working capital to run their businesses and generate revenues in order to timely pay the ILECs for services they purchase.<sup>11</sup>

As noted in the Petition to Reject SBC Tariffs, SBC has grossly exaggerated the risk it has faced in uncollectible fees. In its ARMIS report, it stated that its bad debt was \$79 million, with revenues of \$18 billion, or roughly .4%.<sup>12</sup> Furthermore, that bad debt figure, which is already quite small, is overstated because it contains disputed amounts, which are often unpaid because they were incorrectly billed and therefore not ever properly owed to SBC. Even more compelling, though, is the comparison to the \$400 million that SBC has paid in penalties for violations of regulatory requirements during the approximate same time period.<sup>13</sup> It is difficult to comprehend how \$79 million in bad debt would compel such drastic changes in tariff

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<sup>10</sup> See *id.* at 3.

<sup>11</sup> See *id.* at 9.

<sup>12</sup> See Petition to Reject SBC Tariffs at 3.

<sup>13</sup> See *id.* at 19.

provisions, whereas \$400 million in regulatory fines has spurred little change in the ILEC's behavior. Clearly, the Commission must understand that neither amount is significant enough to necessitate modified business practices by the ILECs, either through reduced anticompetitive behavior toward CLECs or through these proposed tariff modifications. The ILECs cannot have their cake and eat it too – they cannot suggest that such small bad debt figures are enough to drive them into financial ruin on the one hand, while on the other hand continue to absorb much larger regulatory fines simply as a cost of doing business. The Commission should see this double-talking for what it really is – a plea for Commission approval allowing the ILECs to maintain their monopoly position in the market by driving competitive carriers out of the market in any way they can dream up. The Commission should take this opportunity to swiftly enforce its competitive policies with the appropriate level of fines, not sit back while the ILECs implement yet another scheme to undermine competition.

### **CONCLUSION**

ALTS urges the Commission not to allow the RBOCs the opportunity to unilaterally drive more competitive carriers out of the market with their unreasonable and anticompetitive demands. The Commission should deny Verizon the relief it seeks in its Petition because they would undeniably harm competition and impact service to CLEC customers.

Respectfully Submitted,

**Association for Local  
Telecommunications Services**

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